



Draft Discrimination (Jersey) Law 200-

Introduction

This guide gives an overview of the draft Discrimination (Jersey) Law in the form it was presented to the States in February 2008. This is the most recent draft of the law and it is important to note that there are likely to be changes to the law before it is enacted.

A copy of the most recent draft of the law can be found on the website of the States Assembly (www.stateassembly.gov.je) as report R.10/2008.

Overarching Law

In England and Wales there are a number of different discrimination laws relating to different attributes such as race, sex, age and disability. Rather than follow this approach the draft discrimination law is intended to be an overarching law that will apply to several specified attributes. The law will be supplemented by a series of Regulations that will deal with the different attributes e.g. race, sex, disability etc.

Timetable for Implementation

It is proposed that the draft law will be brought into force at the same time as the regulations dealing with race. The second phase will include regulations on sex. Phase two may run in tandem with changes to maternity provision and family friendly and flexible working policies that are being prepared by the Social Security Department. The third phase will deal with disability and the fourth phase will include any other attribute that it is felt requires protection such as age or religion. The most recent indications from the Home Affairs Department are that the law will not come into force before 2011.

Definitions of Discrimination

The draft law covers both direct and indirect discrimination. Article 3 states that a person discriminates against another person if he or she treats that person less favorably because they have a particular attribute (direct discrimination).

Article 3 extends the definition of discrimination to include the imposition of an unreasonable condition or requirement that has the effect of disadvantaging a person because they have a particular attribute (indirect discrimination).

As currently drafted the law does not seem to impose any obligation to make a reasonable adjustment to accommodate, for example, the needs of a disabled person.

Areas Covered

Parts 2 to 4 of the draft law set out the areas where the draft law will apply. The areas are:

1. Paid employment including recruitment, the terms on which employment is offered or and the termination of employment;
2. Contract workers;
3. Partnerships;
4. Professional and trade organizations;
5. Professional bodies;
6. Vocational training;
7. Employment agencies;
8. Voluntary workers;
9. Education;
10. Goods, facilities and services;
11. Access to and use of public premises;
12. Disposal or management of premises i.e. letting property; and
13. Clubs.

The draft law also prohibits discriminatory advertising. Thus it would be unlawful for a newspaper to carry an advertisement that states people of a particular ethnic origin will not be considered for a post.

Victimisation and Harassment

The draft law makes it unlawful to subject a person to a detriment because he or she has made a complaint under the law, unless the person who makes the complaint knows it to be untrue (victimization). The law also renders harassment unlawful as long as the perception of the victim that he or she has been harassed is reasonable.

Enforcement

The draft law states that a complaint must be made within 8 weeks of the act complained of. Where there is a series of acts the complaint must be made within 8 weeks of the last act.

The draft law makes provision for complaint to be made to a discrimination officer. The discrimination officer can decide to take no further action in relation to a complaint if the officer determines that the complaint is trivial, frivolous or vexatious. There is a right of appeal against such a decision.

All complaints relating to employment whether paid or voluntary are referred to the Jersey Advisory and Conciliation Service for conciliation.

If conciliation is not successful employment complaints are referred to the Employment Tribunal for a hearing.

Non work related complaints, e.g. discrimination in the provision of goods and services, can be conciliated by the discrimination officer. If this is not successful, the matter will be referred to a new body called the Discrimination Panel.

Remedies

If it finds that the complaint is well-founded the Employment Tribunal or the Discrimination Panel can:

1. make an order declaring the rights of the complainant;
2. order compensation for any loss, hurt or distress in an amount not exceeding £10,000;
3. recommend that the respondent takes certain action within a specified period.

The States may by regulations amend the maximum level of compensation payable or introduce different levels of compensation for loss, hurt or distress.

Appeal

With the leave of the Employment Tribunal or Discrimination Panel, a complainant or respondent has a right of appeal to the Royal Court on a point of law or if the finding of the Tribunal or Panel was unreasonable having regard to all the circumstances of the case. There is a right of appeal to the Royal Court against a decision of the Tribunal or Panel to refuse leave.

Codes of Practice

The Minister may publish codes of practice containing guidance on the elimination of discrimination in general and the promotion of equality of opportunity.